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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/933,576	08/21/2001	Mark Hugo Martens		5667

7590 09/02/2004  
Mark H. Martens  
3258 Peace Valley Lane  
Falls Church, VA 22044

EXAMINER

ONEILL, MICHAEL W

ART UNIT	PAPER NUMBER
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3713

DATE MAILED: 09/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/933,576

**Applicant(s)**

MARTENS, MARK HUGO

**Examiner**

Michael O'Neill

**Art Unit**

3713

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 14 April 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 10-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 10-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 April 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

***Response to Amendment***

The amendment filed 4-14-04 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: The drawings; the brief description of the drawings; the substitute specification because no statement averring the substitute specification contains no new matter; to the claims because the response lacks in showing where in the originally filed disclosure the basis is for the newly added claims.

Applicant is required to cancel the new matter in the reply to this Office Action.

The substitute specification filed 4-14-04 has not been entered because it does not conform to 37 CFR 1.125(b) and (c) because: it contains new matter and there is no separate statement that said specification does not contain new matter as required by 37 CFR 1.125(b) (1).

***Drawings***

Figure "7" should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). Corrected drawings in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.121(d)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Color photographs and color drawings, "Drawing A", are acceptable only for examination purposes unless a petition filed under 37 CFR 1.84(a)(2) is granted permitting their use as acceptable drawings. In the event that applicant wishes to use the drawings currently on file as acceptable drawings, a petition must be filed for acceptance of the color photographs or color drawings as acceptable drawings. Any such petition must be accompanied by the appropriate fee set forth in 37 CFR 1.17(h), three sets of color drawings or color photographs, as appropriate, and, unless already present, an amendment to

Art Unit: 3713

include the following language as the first paragraph of the brief description of the drawings section of the specification:

The patent or application file contains at least one drawing executed in color. Copies of this patent or patent application publication with color drawing(s) will be provided by the Office upon request and payment of the necessary fee.

Color photographs will be accepted if the conditions for accepting color drawings have been satisfied.

See the Draftsperson form PTO 948 for the Draftspersons' objections to the drawings.

The drawings are objected to for the lack of proper headings in labeling the separate figures. Each figure should be numerically labeled, e.g. Figure 1; Figure 2; Figure 3, etc.; and not Drawing A; Drawing B, etc.

#### ***Specification***

The objection to the specification under 35 USC 112, first paragraph regarding the calculation distance and the requirement of providing the formula for calculating distance based on RPM and resistance is maintained from the previous Office action on merits and incorporated herein. Merely, providing a piece of prior art and concluding one of ordinary skill in the art can do this does not satisfy the Applicant's requirement in fulfilling 35 USC 112, first paragraph.

Art Unit: 3713

***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 10-29 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. It is unclear where in the originally filed specification the subject matter now sought for patent protection within the instant claims is located and Applicant failed to provide a basis within the remarks to direct the Examiner's attention thereto.

***Claim Rejections - 35 USC § 102***

Claims 10-13, 16-25, 28 and 29 are rejected under 35 U.S.C. 102(b) as being anticipated by Miller.

The reasoning that this claims are anticipated by Miller is the same reasoning that claims 1-6 were anticipated by Miller and that reasoning is incorporated herein.

***Claim Rejections - 35 USC § 103***

Claims 14, 15, 26 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miller in view of Richardson et al.

The reasoning that these claims are found unpatentable over the prior art references is the same reasoning that claims 7 and 8 were found unpatentable and that reasoning is incorporated herein.

***Response to Arguments***

Applicant's arguments filed 4-14-04 have been fully considered but they are not persuasive. Applicant contends that by canceling claims 1-9 and adding claims 10-29 the Applicant has defined over the prior art of record. Respectfully, Applicant's arguments merely amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references. Thus, this line of argument is not persuasive to the Examiner.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is

Art Unit: 3713

reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael O'Neill whose telephone number is 703-308-3484. The examiner can normally be reached on Monday through Friday 8:30 am to 5 pm.

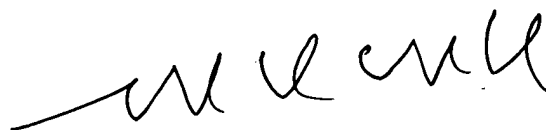
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris Banks, Acting SPE can be reached on 703-308-1745. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.



Art Unit: 3713

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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A handwritten signature in black ink, appearing to read "m o'neill", written in a cursive style.

**MICHAEL O'NEILL  
PRIMARY EXAMINER**